



**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 217, 234, and 235**

**[Docket DARS-2021-0020]**

**RIN 0750-AL49**

**Defense Federal Acquisition Regulation Supplement: Contract Authority for Development and Demonstration of Prototypes (DFARS Case 2021-D025)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2021 that amends the types of line items and contract options that may be included, subject to limitations, in certain contracts initially awarded pursuant to competitive solicitations.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2021-D025, using any of the following methods:

- o *Federal eRulemaking Portal:* <https://www.regulations.gov>.

Search for "DFARS Case 2021-D025" in the search box and select

"Search." Select "Comment" and follow the instructions to submit a comment. Please include your name, company name (if any), and "DFARS Case 2021-D025" on any attached document.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2021-D025 in the subject line of the message.

Comments received generally will be posted without change to <https://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to revise the DFARS to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283). Section 831(a)(2) amends 10 U.S.C. 2302e(a) to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (BAA).

When awarding a contract that results from the competitive selection of a proposal received in response to a BAA, 10 U.S.C. 2302e(a) permits the inclusion of certain contract line items or contract options that would not otherwise be covered under the

general solicitation authority of a BAA. These contract line items or contract options: (1) must be for certain services related to the technology developed under the contract, or the delivery of initial or additional items created as a result of the work performed under the contract; and (2) are subject to the quantity, term, and dollar value limitations expressed at 10 U.S.C. 2302e(b).

10 U.S.C. 2302e is intended to help streamline the process for moving technologies from science and technology into production and to enable the transition of technology for faster fielding by allowing the performance of certain work to continue while a follow-on or production contract is awarded.

## **II. Discussion and Analysis**

Section 831(a)(2) amends 10 U.S.C. 2302e to replace "provision of advanced component development, prototype" with "development and demonstration." As a result, when awarding a contract that results from the competitive selection of a proposal received in response to a BAA, contracting officers may now include a contract line item or contract option for the "development and demonstration" of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract options can be awarded.

This proposed rule reflects the authority provided by section 831(a)(2) and clarifies for contracting officers that a contract line item or contract option included in an award pursuant to 10

U.S.C. 2302e is not limited to the funding types used for the general solicitation authority of a BAA, which are listed at DFARS 235.016.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items**

This rule does not create any new solicitation provisions or contract clauses. It does not impact any existing solicitation provisions or contract clauses.

### **IV. Expected Impact of the Rule**

The proposed rule impacts DoD acquisition planning decisions for contract awards that will result from the competitive selection of a proposal in response to a BAA for which DoD intends to include a contract line item or option for the development and demonstration of technology developed under the contract. The proposed rule broadens the scope of effort for which these contract line items and contract options can be awarded and the type of funding that may be used to fund these line items or options. This proposed rule also helps streamline the process for moving technologies developed under such contracts from science and technology into production.

### **V. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including

potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

## **VI. Congressional Review Act**

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

## **VII. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule primarily affects the acquisition planning decisions made internally by DoD. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The reason for this proposed rule is to implement paragraph (a)(2) of section 831 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021 (Pub. L. 116-283).

The objective of this rule is to revise the type of contract line items or options that may be included, without additional competition, in contracts initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (BAA). When awarding such a contract, contracting officers may now include a contract line item or contract option for the "development and demonstration" of technology developed under the contract. This revision provides a broader scope of effort and funding for which these contract line items and contract options can be awarded, which in turn helps streamline the process for moving technologies developed under such contracts from science and technology into production. The legal basis for the rule is paragraph (a)(2) of section 831 of the NDAA for FY 2021.

Based on data from the Federal Procurement Data System for FY 2018 through FY 2020, on average, DoD annually awards 300 contracts to 200 unique small entities using the competitive selection of proposals resulting from a BAA.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no significant alternatives to this rule that would accomplish the objective of the statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2021-D025), in correspondence.

#### **VIII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Parts 217, 234, and 235**

Government procurement.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217, 234, and 235 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 217, 234, and 235 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 217—SPECIAL CONTRACTING METHODS**

2. Amend section 217.202 by revising paragraph (2) to read as follows:

**217.202 Use of options.**

\* \* \* \* \*

(2) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005-1 for the use of contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

**PART 234—MAJOR SYSTEM ACQUISITION**

3. Amend section 234.005-1 by revising the introductory text and paragraph (1) to read as follows:

**234.005-1 Competition.**

A contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement (see 235.016) may contain a contract line item or contract option using funds not limited to those identified in 235.016 for the development and demonstration or initial production of technology developed under the contract, or the delivery of initial or additional items if the item or a prototype thereof is created as the result of work performed under the contract, only when it adheres to the following limitations:

(1) The contract line item or contract option shall be limited to the delivery of the minimal amount of initial or additional items or prototypes that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

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**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

4. Amend section 235.006-71 by revising paragraph (b) to read as follows:

**235.006-71 Competition.**

\* \* \* \* \*

(b) For a contract that is initially awarded from the competitive selection of a proposal resulting from a broad agency announcement, see 234.005-1 for the use of contract line items or contract options for the development and demonstration or initial production of technology developed under the contract or the delivery of initial or additional items.

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